



MILITARY PENSION DIVISION: What to Know In Case of DIVORCE



The Uniformed Services Former Spouses' Protection Act, 10 U.S.C. 1408, formally recognized the right of state courts to distribute military retired pay to a spouse or former spouse of a service member. The former spouse must have been awarded a portion of a member's military retired pay as common property in the final decree in order for the claim to be recognized in a court of law, **BUT** the division of military pension is neither mandatory nor automatic. It is up to the INDIVIDUAL STATE to decide how and when military retirement is marital or community property that is divisible upon divorce.

BE AWARE of what states you can file suit and be sued in!

A state may only exercise jurisdiction over a military member's pension rights if:

- That state is his or her domicile,
- The member consents to the exercise of jurisdiction by that state, or
- The member resides in that state (for reasons other than military assignment.)

Which State laws apply to my situation?

What are the procedural rules in that state? When can the claim be made? Can the claim be filed after the divorce is final? Are there time requirements? Does the state have a "vesting" requirement?

KNOWING the state laws can involve complex research and may be best left to an expert. Find a family law attorney who knows and understands the complexities of military pension issues. Your local Legal Assistance office can help you locate a qualified attorney.

How much pension pay would be divisible?

Only disposable retirement pay is divisible, but how is that calculated? Disposable retirement pay is calculated by taking a service member's gross retired pay minus any repayments to the federal government, deductions from retired pay for fines or forfeitures, disability pay benefits, and Survivor Benefit Plan premiums.

Elections of disability pay benefits and the Survivor Benefit Plan are important and complex details that need to be fully explored and understood in the separation and divorce process. Be sure to consult an expert regarding these matters.

Direct Payments from DFAS

Ex-spouses may prefer to receive payments directly from the source rather than from the service member, but certain requirements **MUST** be met before DFAS will become involved. Ex-spouses who are entitled to some benefit may receive payments directly from DFAS if all of the following conditions are met:

- The retired pay is divided by final decree of divorce, dissolution, legal separation, or court approval of a property settlement agreement.
- There is a statement in the order that the service member's rights under the Service Members Civil Relief Act were observed.
- The amount to be paid is not more than 50% of the retiree's disposable retired pay.
- There must have been at least 10 years of marriage which overlap 10 years of service creditable toward retirement.
- The order must show the court had jurisdiction over the service member.
- The court order must provide for payment from military retired pay, and the amount must be a method allowed by DFAS.

Methods for Pension Division

There are generally two methods available for division of a military pension; present value offset and deferred division.

- Present Value Offset: The present value of the retirement payments can be calculated to be used for a tradeoff so that the service member can keep the entire pension. This results in a complete final accounting and division of assets, not the postponement of property division until retirement.
- Deferred Division: Payments by the service member do not begin until that individual has retired and has started to receive payments. This type of division is not preferred by many courts since it is seen as a postponement of a person's (the ex-spouse) property rights. If the deferred division of property is elected, the service member may be obligated to pay interest on the unpaid pension rights to the ex-spouse.